

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP

Attorneys for Defendant

DINEX LICENSING, LLC

DINEX CONSULTING, LLC

EPICERIE BOULUD ONLINE, LLC

DINEX NYC RESTAURANT SERVICES, LLC

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File No.: 14148.00160

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
STEVEN MATZURA and on behalf of all other
persons similarly situated,

Index No.: 17-cv-4912

Plaintiff,

-against-

**DEFENDANTS' ANSWER TO THE
COMPLAINT WITH AFFIRMATIVE
DEFENSES AND JURY DEMAND**

DINEX LICENSING, LLC, DINEX CONSULTING,
LLC, EPICERIE BOULUD ONLINE, LLC and
DINEX NYC RESTAURANT SERVICES, LLC,

Defendants.

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ANSWER OF DEFENDANT WITH AFFIRMATIVE DEFENSES

Defendants DINEX LICENSING, LLC DINEX CONSULTING, LLC, EPICERIE
BOULUD ONLINE, LLC and DINEX NYC RESTAURANT SERVICES, LLC, hereinafter
("Defendant"), by their attorneys, Wilson Elser Moskowitz Edelman & Dicker LLP, respectfully
answers the Complaint of the Plaintiff as follows:

AS TO INTRODUCTION

1. Paragraph "1" of the Complaint is a statement that does not require admission or
denial.

2. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “2” of the Complaint.

3. Paragraph “3” of the Complaint is a statement that does not require admission or denial.

4. Defendant denies the allegations contained in paragraph “4” of the Complaint, and respectfully refers all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

5. Defendant denies the allegations contained in paragraph “5” of the Complaint.

JURISDICTION AND VENUE

6. Defendant neither admits nor denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “6” of the Complaint, and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

7. Defendant neither admits nor denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “7” of the Complaint, and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

8. Defendant neither admits nor denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “8” of the Complaint, and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

9. Defendant denies the allegations contained in paragraph “9” of the Complaint.

10. Paragraph “10” of the Complaint is a statement that does not require admission or denial

PARTIES

11. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “11” of the Complaint.

12. Defendant admits the allegations contained in paragraph “12” of the Complaint only to the extent that that it is organized under the laws of New York, with principal place of business in New York.

13. Defendant admits the allegations contained in paragraph “13” of the Complaint only to the extent that that it is organized under the laws of New York, with principal place of business in New York.

14. Defendant admits the allegations contained in paragraph “14” of the Complaint only to the extent that that it is organized under the laws of New York, with principal place of business in New York.

15. Defendant admits the allegations contained in paragraph “15” of the Complaint only to the extent that that it is organized under the laws of New York, with principal place of business in New York.

16. Defendant denies the allegations contained in paragraph “16” of the Complaint.

17. Defendant denies the allegations contained in paragraph “17” of the Complaint.

NATURE

18. Paragraph “18” of the Complaint is a statement that does not require admission or denial.

19. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “19” of the Complaint.

20. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “20” of the Complaint.

21. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “21” of the Complaint.

22. Defendant denies the allegations contained in paragraph “22” of the Complaint, and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

23. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “23” of the Complaint.

STATEMENT OF FACTS

24. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “24” of the Complaint.

25. Defendant denies the allegations contained in paragraph “25” of the Complaint.

26. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “26” of the Complaint.

27. Defendant denies the allegations contained in paragraph “27” of the Complaint.

28. Defendant denies the allegations contained in paragraph “28” of the Complaint.

29. Defendant denies the allegations contained in paragraph “29” of the Complaint.

30. Defendant denies the allegations contained in paragraph “30” of the Complaint.

31. Defendant denies the allegations contained in paragraph “31” of the Complaint.

32. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “32” of the Complaint

33. Defendant denies the allegations contained in paragraph “33” of the Complaint.

34. Defendant denies the allegations contained in paragraph “34” of the Complaint.

35. Defendant denies the allegations contained in paragraph “35” of the Complaint, and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect

36. Defendant denies the allegations contained in paragraph “35” of the Complaint, and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

37. Defendant denies the allegations contained in paragraph “37” of the Complaint.

38. Defendant denies the allegations contained in paragraph “38” of the Complaint.

39. Defendant denies the allegations contained in paragraph “39” of the Complaint.

CLASS ACTION ALLEGATIONS

40. Defendant denies the allegations contained in paragraph “40” of the Complaint.

41. Defendant denies the allegations contained in paragraph “41” of the Complaint.

42. Defendant denies the allegations contained in paragraph “42” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

43. Defendant denies the allegations contained in paragraph “43” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

44. Defendant denies the allegations contained in paragraph “44” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

45. Defendant denies the allegations contained in paragraph “45” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

46. Defendant denies the allegations contained in paragraph “46” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

AS FOR THE FIRST CAUSE OF ACTION

47. In response to paragraph “47”, defendants repeat and reallege each admission or denial made in response to paragraphs “1” through “46” with the same force and effect as if more fully stated at length herein.

48. Paragraph “48” of the Complaint is a statement that does not require admission or denial.

49. Defendant denies the allegations contained in paragraph “49” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

50. Paragraph “50” of the Complaint is a statement that does not require admission or denial.

51. Paragraph “51” of the Complaint is a statement that does not require admission or denial.

52. Paragraph “52” of the Complaint is a statement that does not require admission or denial.

53. Defendant denies the allegations contained in paragraph “53” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

54. Paragraph “54” of the Complaint is a statement that does not require admission or denial.

SECOND CAUSE OF ACTION

55. In response to paragraph “55”, defendants repeat and reallege each admission or denial made in response to paragraphs “1” through “54” with the same force and effect as if more fully stated at length herein.

56. Paragraph “56” of the Complaint is a statement that does not require admission or Complaint.

57. Defendant denies the allegations contained in paragraph “57” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

58. Defendant denies the allegations contained in paragraph “58” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

59. Defendant denies the allegations contained in paragraph “59” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

60. Paragraph "60" of the Complaint is a statement that does not require admission or Complaint.

61. Paragraph "61" of the Complaint is a statement that does not require admission or Complaint.

62. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "62" of the Complaint.

63. Defendant denies the allegations contained in paragraph "63" of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

64. Defendant denies the allegations contained in paragraph "64" of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

65. Defendant denies the allegations contained in paragraph "65" of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

66. Defendant denies the allegations contained in paragraph "66" of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

67. Defendant denies the allegations contained in paragraph "67" of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

68. Defendant denies the allegations contained in paragraph "68" of the Complaint.

69. Paragraph “69” of the Complaint is a statement that does not require admission or Complaint.

THIRD CAUSE OF ACTION

70. In response to paragraph “70”, defendants repeat and reallege each admission or denial made in response to paragraphs “1” through “70” with the same force and effect as if more fully stated at length herein.

71. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “71” of the Complaint.

72. Paragraph “72” of the Complaint is a statement that does not require admission or Complaint.

73. Paragraph “73” of the Complaint is a statement that does not require admission or Complaint.

74. Defendant denies the allegations contained in paragraph “74” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

75. Defendant denies the allegations contained in paragraph “75” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

76. Defendant denies the allegations contained in paragraph “76” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

77. Paragraph “77” of the Complaint is a statement that does not require admission or Complaint.

78. Paragraph “78” of the Complaint is a statement that does not require admission or Complaint.

79. Defendant denies the allegations contained in paragraph “79” of the Complaint.

80. Defendant denies the allegations contained in paragraph “80” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

81. Paragraph “81” of the Complaint is a statement that does not require admission or Complaint.

FOURTH CAUSE OF ACTION

82. In response to paragraph “82”, defendants repeat and reallege each admission or denial made in response to paragraphs “1” through “82” with the same force and effect as if more fully stated at length herein.

83. Paragraph “83” of the Complaint is a statement that does not require admission or Complaint.

84. Defendant denies the allegations contained in paragraph “84” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

85. Defendant denies the allegations contained in paragraph “85” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

86. Defendant denies the allegations contained in paragraph “86” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

87. Defendant denies the allegations contained in paragraph “87” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

88. Defendant denies the allegations contained in paragraph “88” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

89. Defendant denies the allegations contained in paragraph “89” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

90. Defendant denies the allegations contained in paragraph “90” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

91. Defendant denies the allegations contained in paragraph “91” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

92. Defendant denies the allegations contained in paragraph “92” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

93. Defendant denies the allegations contained in paragraph “93” of the Complaint.

94. Paragraph “94” of the Complaint is a statement that does not require admission or Complaint.

FIFTH CAUSE OF ACTION

95. In response to paragraph “95”, defendants repeat and reallege each admission or denial made in response to paragraphs “1” through “94” with the same force and effect as if more fully stated at length herein.

96. Defendant denies the allegations contained in paragraph “96” of the Complaint and respectfully refer all questions of law to this Honorable Court at the time of trial for their true meaning, interpretation and legal effect.

97. Defendant denies the allegations contained in paragraph “97” of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

98. Upon information and belief, the plaintiff lacks the requisite standing under the Americans with Disability Act (“ADA”) to maintain this cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

99. Any alleged violations do not affect the Plaintiff’s alleged disability.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

100. The Plaintiff has failed to allege a plausible intention or desire to return to the Defendant’s website, or that he would have returned if not for the alleged barrier.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

101. Upon information and belief, the Plaintiff lacks standing as he is a serial ADA litigant who has and continues to pursue a course of vexatious litigation against this and other similarly situated defendants for the purpose of recovery attorney's fees under the ADA.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

102. The website is not subject to the rules and regulations promulgated within the ADA. The internet is not a "place of public accommodation".

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

103. Removal of the alleged barriers and/or alternative access requirements with respect to the website would cause an undue hardship and/or are not readily achievable and are thus not required.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

104. Plaintiff could not, even with the alleged reasonable accommodation, enjoy the right in question.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

105. The Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

106. Plaintiff's claims are barred from recovery, in whole or in part, as Plaintiff has suffered no damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

107. Plaintiff's claims are barred by the doctrine of laches.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

108. Plaintiff's claims are barred by the doctrine of estoppel.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

109. Plaintiff's claims are barred by the doctrine of waiver.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

110. Plaintiff's damages, if any, were caused by individuals and entities other than Defendants, over which Defendants had no control.

DEMAND FOR TRIAL BY JURY

WHEREFORE, Defendants DINEX LICENSING, LLC DINEX CONSULTING, LLC, EPICERIE BOULUD ONLINE, LLC and DINEX NYC RESTAURANT SERVICES, LLC, demand a trial by jury for all claims and issues in this action for which these defendants are or may be entitled to a jury trial.

WHEREFORE, Defendants DINEX LICENSING, LLC DINEX CONSULTING, LLC, EPICERIE BOULUD ONLINE, LLC and DINEX NYC RESTAURANT SERVICES, LLC, demand judgment dismissing the Complaint as against it with prejudice in its entirety, together with costs and disbursements, and such other relief as the Court deems just and proper.

Dated: White Plains, New York
September 6, 2016

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP

BY: 

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Joseph P. Wodarski, Esq.
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